IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.03.2007

CORAM:

THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.13886 of 2000

The Management of Melur Primary
Agricultural Cooperative Bank Ltd. II 622
represented by its President
E.V. Ramasamy
Melur, Kallakurichi Taluk — Petitioner

vs.

1. N. Raja

2. The Presiding Officer
Labour Court
Cuddalore — Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus as stated therein.

For petitioner — Mr. T. Dhanyakumar
For 1st respondent — Mr. K.M. Ramesh

O R D E R

Seeking a writ of certiorari to call for the records relating to order dated 27.03.2000 made in C.P. No.25 of 1998 on the file of the second respondent Labour Court, Cuddalore, and to quash the same, the petitioner Bank has filed this writ petition.

2. According to the petitioner Bank, the first respondent joined as its Secretary on 30.06.1988 and was suspended by its Special Officer on 09.08.1991 and subsequently dismissed from service on 09.05.1992 with effect from the date of suspension. This order of dismissal was quashed by the second respondent Labour Court vide its order dated 17.06.1996 wherein the petitioner Bank was directed to reinstate the first respondent with continuity of service, backwages and all other attendant benefits. In pursuance of the award of the Labour Court, the first respondent was reinstated in service effective from 20.12.1996 with payment of backwages upto 30.06.1992. Yet, the first respondent absented himself from duty from 17.02.1998.

3. In the claim petition filed by the first respondent before the second respondent Labour Court to compute the monetary benefits under Section 33 C(2) of the Industrial Disputes Act, 1947 (in short "the Act"), claiming Rs.2,03,278/- for the period between 01.07.1992 and 31.03.1998, the petitioner Bank filed its counter contending that the 12 (3) Settlement entered into by it with the first respondent does not have a binding force on it since the same was signed by its President with the connivance of the first respondent and the Labour Officer

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

without understanding the significance and consequence of such a Settlement.

4. The second respondent Labour Court, by its order dated 27.03.2000, by directing the petitioner Bank to pay to the first respondent a sum of Rs.1,49,458/- as backwages from 01.07.1992 to 30.06.1997, allowed the Claim Petition in part. As against this order of the Labour Court, the present writ petition.

5. The first respondent has filed counter. According to him, since he was insisting on payment of backwages based on the Settlement as well as the order of the second respondent Labour Court in I.D. No.181 of 1999 which was not challenged by the petitioner Bank, he was prevented from reporting to work with effect from 17.02.1998 and hence, he filed a Claim Petition before the second respondent Labour Court which was allowed in part directing the petitioner Bank to pay Rs.1,49,458/- as backwages and the said order of the Labour Court is perfectly in order and does not warrant any sort of interference by this Court.

6. Mr. T. Dhanyakumar, learned counsel for the petitioner, as regards the validity of the 12(3) Settlement, has contended that the Labour Officer, Cuddalore is not the Conciliation Officer within the meaning of Section 12 and Section 2(d) of the Act and as such, the Settlement is invalid. It is his further contention that the Settlement does not bind the petitioner Bank since its President is not competent to sign the Settlement under Section 12 (3) of the Act and it is only officers like Special Officer and Secretary who can validly sign such Settlement. With regard to the amount awarded by the Labour Court, the counsel for the petitioner has contended that only a sum of Rs.1,16,350/- is liable to be paid to the first respondent between 01.07.1992 and 31.12.1996 and since a sum of Rs.71,000/- has already been paid, the balance payable is only Rs.45,946/- and in this way, the amount arrived at by the Labour Court as backwages is erroneous.

7. Per contra, Mr. K.M. Ramesh, learned counsel for the first respondent has contended that when the petitioner Bank has not challenged the award of the Labour Court ordering reinstatement and backwages, it is arbitrary on the part of the petitioner Bank to deny the same to the first respondent and that too after entering into 12(3) Settlement, on the ground that the Settlement is not a valid one since the President has signed the Settlement without knowing its significance. In response to the contention of the counsel for the petitioner Bank that the Labour Court has determined the backwages payable erroneously, the counsel for the respondent has contended that this Court may not undertake to re-appreciate the same set of evidence available before the Labour Court to come to a different conclusion, that too, when the amount arrived at by the Labour Court is a perfect one.

8. In support of his contention that the Settlement arrived at should not be adjudicated upon, the counsel for the first respondent has relied on a Division Bench decision of this Court in the matter of Tiruchirapalli Hirudayapuram Co-op. Bank Employees Union, etc. etc. vs. Joint Registrar of Co-op. Societies, Tiruchirapalli, etc. etc. reported in 1992 (1) LLJ 747 and the relevant portion reads thus:

https://hcservices.ecourts.gov.in/hcservices/

> "We are only called upon to go into the legal propriety of the proceedings impugned in these cases whereby the settlements are sought to be nullified. Whatever be the nature of the factors alleged as vitiating the settlements, can the respondents by the proceedings impugned, give an adjudication over the settlements and unilaterally nullify them, is the question that alone comes up for consideration by us. Suffice it to point out that what the respondents have done is not only unorthodox, but also not fitting in with any precept of law. The respondents cannot be issuing the proceedings impugned, adjudicate over the settlements and unilaterally set at naught the settlements apparently fitting in with the provisions of the Act. There is a total lack of jurisdiction and competency in law in this regard. This factor alone, in our view, should weigh with us for purposes of deciding these cases. There is no need for us to travel beyond this.
>
> . . . Learned Advocate General would submit that there could be examination of the resolutions or the decisions of the Cooperative Societies authorizing the entering into such settlements pursuant to the exercise of power under Section 153 of Act 30 of 1983 and the Court must view the impugned proceedings as tending to achieve this end only. We are unable to accept this line of thinking. . ."

9. Heard both sides.

10. The first point, in my view, which deserves consideration in this writ petition is, whether the petitioner Bank can seek to challenge the order of the second respondent Labour Court on the ground that the Settlement entered into by its President is not a valid one as he had signed the same with no knowledge of its significance and that too, in connivance with the first respondent and the Labour Officer.

11. It is to be noted that before the Labour Court, the first respondent has marked five exhibits in support of his case and of course, none has been examined. On the other hand, the petitioner Bank has not let in any evidence, either oral or documentary. Law is well-settled that the onus is on the person who makes the claim to prove his case. In the instant case, though it is the case of the petitioner Bank that the Settlement cannot be said to be a valid one on the ground already referred to above and as such, not binding it, it has not let in any evidence, whatsoever, before the Labour Court. Also, the contention of the petitioner Bank that its President had signed the Settlement unaware of its significance is too big a pill to swallow, the reason being, the President who is the top-most office bearer in the petitioner bank can never be expected to sign any document without any knowledge of the same and in that view of the matter,

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

the contention of the petitioner Bank does not have legs to stand. Further, as held in the Division Bench judgment (supra) relied on by the counsel for the respondent, it may not be proper for this Court to adjudicate over the Settlement which may tantamount to unilaterally setting at naught the same which is fitting in with the provisions of the Act, particularly in the absence of any challenge by the petitioner Bank to the award of the Labour Court in respect of reinstatement of the first respondent.

12. The second point arising for consideration is whether the Labour Court is correct in fixing the backwages as Rs.1,49,458/-. Since it is made clear from the above discussion that the 12(3) Settlement entered into is a valid one, it is evident from the copy of the same marked as Ex.A.4 that the actual backwages payable is Rs.2,08,458/-. The first respondent himself has admitted that a sum of Rs.59,000/- has already been received by him from the petitioner Bank. Since the Settlement is valid only for a period of five years, i.e. from 01.07.1992 to 30.06.1997, the Labour Court has rightly rejected the claim of the first respondent till 31.03.1998 and has considered his claim only upto 30.06.1997 and has arrived at a sum of Rs.1,49,458/- by deducting the amount already received by the first respondent from the amount of 12(3) Settlement (Rs.2,08,458 (-) Rs.59,000).

13. In view of the discussion made above and the ruling of the Division Bench of this Court relied on by the counsel for the first respondent, it is my considered view that the Labour Court has rightly taken into consideration all aspects of the matter before passing the order under challenge. As such, the order passed by the second respondent Labour Court is upheld. As a result, the writ petition fails and is accordingly dismissed without any order as to costs.

cad

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Presiding Officer
Labour Court
Cuddalore

2.The Record Keeper,
V.R.Section, High Court,Madras-104.

+1 cc to Mr.T.Dhanyakumar, Advocate Sr.No.15440.

+1 cc to Mr.K.M.Ramesh, Advocate Sr.No.15136.

Mathi(co)
dcp/22.3.07

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/